



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

October 7, 1992

Honorable Bill Sims
Chairman
Senate Natural Resources Committee
Texas State Senate
One Capitol Square, Room 325
Austin, Texas 78711-2068

Letter Opinion No. 92-62

Re: Kinds of evidence a notary
public may accept for the purpose of
acknowledging a written instru-
ment (ID# 16743)

Dear Senator Sims:

You have requested our opinion regarding the kind of evidence a notary public may accept for the purpose of acknowledging a written instrument. Section 121.005 of the Civil Practice and Remedies Code provides:

(a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence on the oath of a credible witness that the acknowledging person is the person who executed the instrument and is described in it.

(b) Except in a short form certificate of acknowledgment authorized by Section 121.008, the officer must note in the certificate of acknowledgment that:

- (1) he personally knows the acknowledging person; or
- (2) evidence of a witness was used to identify the acknowledging person.

An "officer" for purposes of taking an acknowledgment includes:

- (1) a clerk of a district court;
- (2) a judge or clerk of a county court; or
- (3) a notary public.

Civ. Prac. & Rem. Code § 121.001. Thus, under the provisions of chapter 121, Civil Practice and Remedies Code, a notary may not take an acknowledgment unless the acknowledging individual either is known personally to the notary, or a credible witness states under oath that the acknowledging individual is in fact who he claims to be.

In 1987, the legislature amended article 5955, V.T.C.S., by adding the italicized language:

Each notary public shall keep a well bound book, in which shall be entered the date of all instruments *notarized* by him, the date of such *notarizations*, the name *and signature* of the grantor or maker, the place of his residence, whether personally known, *identified by an identification card issued by a governmental agency or a passport issued by the United States*, or introduced.

Acts 1987, 70th Leg, ch. 891, § 6, at 2989-90 (emphasis in original).

In 1989, these provisions were codified as section 406.014 of the Government Code.

(a) A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of:

- (1) the date of each instrument notarized;
- (2) the date of the notarization;
- (3) the name of the signer, grantor, or maker;
- (4) the signer's, grantor's, or maker's residence or alleged residence;
- (5) whether the signer, grantor, or maker is personally known by the notary public, *was identified by an identification card issued by a governmental agency or a passport issued by the United States*, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker.

Acts 1989, 71st Leg., ch. 4, § 2.17(a), at 210; Acts 1989, 71st Leg., ch. 406, at 1552. According to the "historical and statutory notes" following section 406.014, the

amendment to subdivision (5), *supra*, "inserted provisions allowing for identification by an identification card or passport."

It is well established that statutes should be construed, if possible, to harmonize with other laws on the same subject. *La Sara Grain Co. v. First Nat'l Bank of Mercedes*, 673 S.W.2d 558 (Tex. 1984); *Duval Corporation v. Sadler*, 407 S.W.2d 493 (Tex. 1966). Section 121.005 of the Civil Practice and Remedies Code, which recognizes two methods of taking an acknowledgment, is an ancient statute which has not been substantively amended since 1846. By contrast, section 406.014 of the Government Code was last amended in 1987 to authorize use of a third method. In our opinion, there is no necessary conflict between the two provisions; section 406.014 merely permits an additional kind of acknowledgment that is cumulative of those listed in section 121.005.

In answer, then, to your specific questions, subsection 121.005(a) of the Civil Practice and Remedies Code still applies to notaries, but it must be read in conjunction with section 406.014 of the Government Code. On the other hand, subsection 121.005(a) applies to all *officers* listed in section 121.001, including notaries, district clerks, county judges, and county clerks. As we have indicated, *supra*, section 406.014 authorizes the three methods of identification listed in subdivision (a)(5) of that section. Finally, subdivision (a)(5) does not require that the second method of identification -- "introduction" to the notary by a third party -- be made under oath. Subsection 121.005(a) does, however, direct that an introduction be made under oath. In our opinion, the statutes may most reasonably be harmonized by including the oath requirement of subsection 121.005(a) as a prerequisite for using the "identification by introduction" method of subdivision (a)(5) of section 406.014.

S U M M A R Y

Subsection 121.005(a), of the Civil Practice and Remedies Code should be read together with subdivision (a)(5) of section 406.014 of the Government Code to permit any one of three methods a notary public may use for proving the acknowledgment of a written instrument: 1) the notary's personal knowledge that the person is in fact who he claims to be; 2) introduction of the person to the notary by the declaration,

under oath, of a credible witness; or 3) identification of the person to the notary by an identification card issued by a governmental agency, or by a passport issued by the federal government.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Rick Gilpin".

Rick Gilpin
Deputy Chief
Opinion Committee